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**SCULLY, SCOTT, MURPHY  
& PRESSER**

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# Fax

<b>To:</b>	Lawrence Crane United States Patent & Trademark Office	<b>From:</b>	Mark J. Cohen, Esq.
<b>Fax:</b>	1-703-872-9306	<b>Pages:</b>	10 (including fax cover sheet)
<b>Phone:</b>		<b>Date:</b>	December 16, 2004
<b>Re:</b>	Michael P. DeNimmo, et al U.S. Patent Appln. No. 10/099,620 Our Docket: 17423 (PC11066A)	<b>CC:</b>	

☐ Urgent    ☐ For Review    ☐ Please Comment    ☐ Please Reply    ☐ Please Recycle

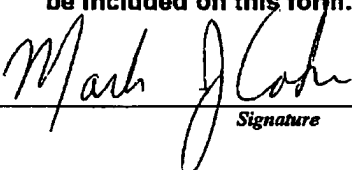
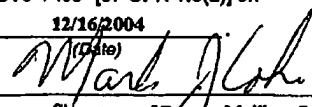
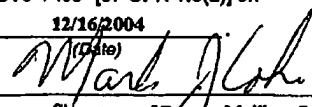
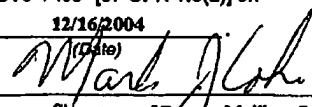
Attached for submission to the U.S. Patent and Trademark Office are the following:

- Request for Reconsideration of the Denial of the Petition Under 37 C.F.R. §1.313(a) to Withdraw From Issue (in duplicate).

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DEC 16 2004

<b>TRANSMITTAL LETTER</b> <b>(General - Patent Pending)</b>				Docket No. 17423 (PC11066A)											
In Re Application Of: <b>Michael P. DeNinno et al.</b>															
Application No. 10/099,620	Filing Date March 15, 2002	Examiner Lawrence Crane	Customer No. 23389	Group Art Unit 1623	Confirmation No. 2274										
Title: <b>COMPOUNDS FOR THE TREATMENT OF ISCHEMIA</b>															
<u>TO THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE:</u>															
Transmitted herewith is:  <b>Request for Reconsideration of the Denial of the Petition Under 37 C.F.R. 1.313(a) to Withdraw from Issue (in duplicate)</b>															
In the above identified application.															
<input checked="" type="checkbox"/> No additional fee is required.															
<input type="checkbox"/> A check in the amount of _____ is attached.															
<input checked="" type="checkbox"/> The Director is hereby authorized to charge and credit Deposit Account No. 19-1013/SSMP as described below.															
<input type="checkbox"/> Charge the amount of _____															
<input checked="" type="checkbox"/> Credit any overpayment.															
<input checked="" type="checkbox"/> Charge any additional fee required.															
<input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.															
<b>WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.</b>															
 _____ Signature			Dated: December 16, 2004												
Mark J. Cohen Registration No. 23,311 Scully, Scott, Murphy & Presser 400 Garden City Plaza, Suite 300 Garden City, NY 11530 (516) 742-4343			<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td colspan="2">I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on</td></tr><tr><td style="text-align: center;">12/16/2004 (Date)</td><td style="text-align: center;"></td></tr><tr><td colspan="2" style="text-align: center;">Signature of Person Mailing Correspondence</td></tr><tr><td colspan="2" style="text-align: center;">Mark J. Cohen</td></tr><tr><td colspan="2" style="text-align: center;">Typed or Printed Name of Person Mailing Correspondence</td></tr></table>			I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on		12/16/2004 (Date)		Signature of Person Mailing Correspondence		Mark J. Cohen		Typed or Printed Name of Person Mailing Correspondence	
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CC:															

P168/REV03

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<b>Applicant(s):</b>	Michael P. DeNinno et al.	<b>Examiner:</b>	Lawrence Crane
<b>Serial No:</b>	10/099,620	<b>Art Unit:</b>	1623
<b>Filed:</b>	March 15, 2002	<b>Docket:</b>	17423 (PC11066A)
<b>For:</b>	COMPOUNDS FOR THE TREATMENT OF ISCHEMIA	<b>Dated:</b>	December 16, 2004

**Confirmation No.: 2274**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**REQUEST FOR RECONSIDERATION OF THE DENIAL OF THE  
PETITION UNDER 37 C.F.R. §1.313(a) TO WITHDRAW FROM ISSUE**

Sir:

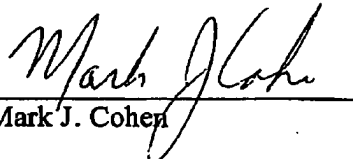
Applicants respectfully request consideration of the Decision dated November 30, 2004, regarding their petition to withdraw the above-identified application from issue.

Applicants have paid the Issue Fee on October 21, 2004. Subsequent thereto, applicants have again reviewed one of the references cited and applied by the United States Patent and Trademark Office in an Official Action, viz., U.S. Patent No. 2,852,505 to Baker et al. ("Baker et al.").

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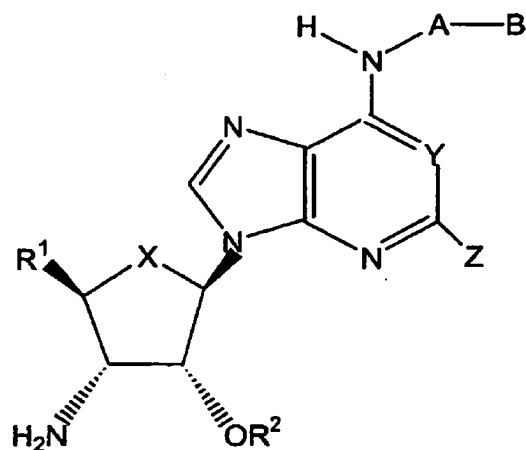
**CERTIFICATION OF FACSIMILE TRANSMISSION**

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

Dated: December 16, 2004  
Mark J. Cohen

Upon closer scrutiny, and not realized at the time of the filing of the Response, it was noted that Baker et al. disclose species which are just as relevant as those identified in the Official Action dated October 27, 2003 and which makes one or more of the allowed claims of the present application unpatentable.

Claims 1, 24, 27, 30 of the instant application, as allowed, are directed to compound having the formula:



(I)

wherein

X is, inter alia, oxy;

Y is, inter alia, N;

Z is, inter alia, H;

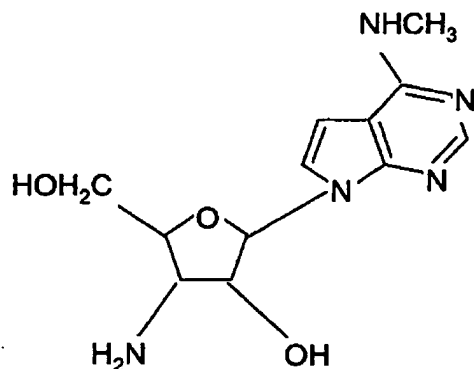
R<sup>1</sup> is, inter alia, hydroxymethyl;

R<sup>2</sup> is, inter alia, H;

A is, inter alia, -(CH<sub>2</sub>)<sub>n</sub>- where n is an integer from 1 to 4; and

B is, inter alia, hydrogen.

Attention is directed to Examples 27, 36, 52 and 53 of Baker et al. Examples 27 and 36 disclose 6-methylamino-9-(3-amino-3-dioxy- $\beta$ -D-ribofuranosyl)purine, which has the formula:



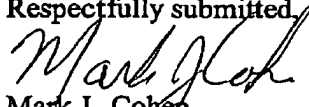
Examples 52 and 53 disclose similar compounds, except the substituent at the 6 position of the purine ring are butylamino, and cyclohexylamino respectively. In each of the aforementioned Examples, the 5-position of the tetrahydrofuryl ring has a  $\text{CH}_2\text{OH}$  group. These three examples make one or more claims that have been allowed by the United States Patent and Trademark Office unpatentable.

As amended in the Supplemental Amendment submitted with the original Petition none of the claimed subject matter in the aforementioned claims, viz, Claims 1, 24, 27 and 30 and those dependent therein, have a  $\text{CH}_2\text{OH}$  substituent on the 5' position. Moreover, the claimed subject matter, as amended, is not suggested by the teachings in Baker et al. Consequently the claimed subject matter is not anticipated or rendered obvious by the teachings in Baker et al.

It is noted that the Decision on the Petition indicates that the undersigned does not have Power of Attorney. However, the undersigned has implicit authority to act on behalf of the assignee. The undersigned will be filing in due course the appropriate documentation to explicitly provide the authority to represent the assignee in this matter.

In view of the reasons provided herein, it is respectfully requested that reconsideration of this Petition be granted and prosecution on the merits of the instant application be reopened.

Applicants hereby authorize the Commissioner to charge the Deposit Account No. 19-1013/SSMP any additional fees required in association with this Request for Reconsideration. A duplicate copy of the Petition is enclosed herewith.

Respectfully submitted,  
  
Mark J. Cohen  
Registration No. 32,211

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MJC:ng

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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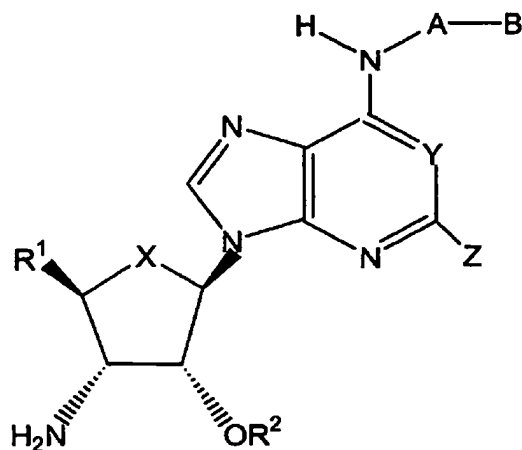
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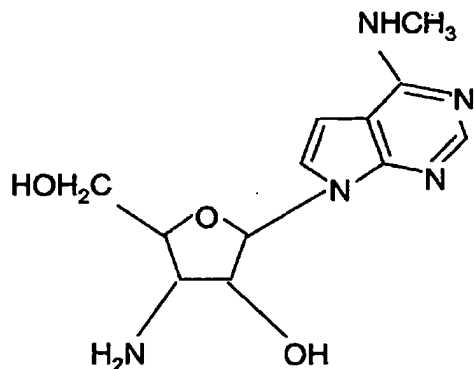
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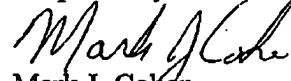
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